



Paper No. 11

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In re Application of	:	OFFICE OF PETITIONS
Tsuyoshi Yamamoto et al	:	
Application No. 09/873,206	:	DECISION ON PETITION
Filed: June 5, 2001	:	UNDER 37 CFR 1.55(c)
Attorney Docket No. NIPP.0001	:	

This is a decision on the petition under 37 CFR 1.55(a)(1)(ii), filed August 28, 2003, which is being treated as a petition under 37 CFR 1.55(c) requesting acceptance of an unintentionally delayed claim under 35 U.S.C. § 119 (a) - (d) and (f) for benefit of the filing date of the following foreign application: Japanese Application No. 10-347299, filed December 7, 1998.

The petition is **DISMISSED**.

A review of the file record, more specifically, the declaration filed with the instant application, discloses that applicant is claiming foreign priority benefits to Japanese Application No. 10-347299, but fails to claim 35 U.S.C. § 120 benefits to the PCT application; namely PCT Application No. PCT/JP99/06749. Since the filing of the Japanese application is more than one year from the date of filing of the instant nonprovisional application, this application is not entitled to a benefit claim under 37 CFR 1.55(a) to the Japanese application. However, applicant may wish to claim 35 U.S.C. § 120 benefits to the PCT application **if the PCT application was pending at the time of filing of the U.S. application**. Then, the Japanese foreign application will be filed within one year of the PCT application.

In view of the above, a petition under 37 CFR 1.78(a)(3), along with a renewed petition under 37 CFR 1.55(c), an amendment to the first line of the specification (or an Application Data Sheet in accordance with 37 CFR 1.76(b)(5)) to include the 35 U.S.C. § 120 benefits to the PCT application, a petition to withdraw from issue under 37 CFR 1.313(c)(2), and a Request for Continued Examination under 37 CFR 1.114 will be required in order for applicant to have the amendment to the specification considered by the

examiner after payment of the issue fee. Additionally, the relationship between the instant application and the PCT application must also be stated; i.e., whether the instant nonprovisional application is a continuation, division, or continuation-in-part of the PCT application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Window located at:

2011 South Clark Place
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By fax: (703) 872-9306
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Any questions concerning this matter may be directed to the undersigned at (703) 305-8680.



Frances Hicks

Petitions Examiner
Office of Petitions
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for Patent Examination Policy